(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

DATE: JUL 3 1 2013 OFFICE: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Rachel DiFiore for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center (director), denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner describes itself as a medical software development and technology business. It seeks to permanently employ the beneficiary in the United States as a senior systems analyst. The petitioner requests classification of the beneficiary as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

At issue in this case is whether the beneficiary possesses an advanced degree as required by the terms of the labor certification and the requested preference classification.

I. PROCEDURAL HISTORY

As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), approved by the U.S. Department of Labor (DOL).[1] The priority date of the petition is May 27, 2008.[2]

Part H of the labor certification states that the offered position has the following minimum requirements:

H.4.	Education: Bachelor's.
H.4-B.	Major field of study: Engineering, Electronics, Telecommunications, Communications.
H.5.	Training: None required.
H.6.	Experience in the job offered: 60 months.
H.7.	Alternate field of study: Accepted.
H.7-A.	Major field of study: Computer Science, Information Technology, Mathematics.
H.8.	Alternate combination of education and experience: Accepted.
H.8-A.	Alternate level of education: Master's.
H.8-C.	Number of years of experience required in H.8: 3 years.
H.9.	Foreign educational equivalent: Accepted.
H.10.	Experience in an alternate occupation: Accepted.
H.10-A.	Number of months of experience in alternate occupation: 60 months.
H.10-B.	Alternate occupation: Data analysis and processing.

[1] *See* section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D); *see also* 8 C.F.R. § 204.5(a)(2).

[2] The priority date is the date DOL accepted the labor certification for processing. *See* 8 C.F.R. § 204.5(d). In the present case, the petitioner has recaptured the priority date of the Form I-140 it previously filed on behalf of the beneficiary. The labor certification supporting this earlier Form I-140 was filed with DOL on May 27, 2008.

H.14. Specific skills or other requirements: Demonstrated Expertise (DE) in systems analysis of healthcare claims processing systems and systems analysis and design of a healthcare claims processing/claims adjudication engine for compliance with CMS, state regulations (Medicare/Medicaid), and commercial health-plan policies; DE developing and designing web interface according to TCP/IP or Socket Programming and designing a 3rd party interface to Ingenix bundling/unbundling, according to SOAP protocols; DE programming in C/C++ and ProC, including multi-threaded and database programming in PL/SQL.

Therefore, the offered position requires the beneficiary, as of the priority date, to hold a bachelor's or a foreign equivalent degree in engineering, electronics, telecommunications, communications, computer science, information technology or mathematics and to have five years of experience as a senior systems analyst. Alternatively, the petitioner will accept an applicant with a master's or a foreign equivalent degree in one of the preceding fields, with three years of qualifying experience.

Part J of the labor certification states that the beneficiary possesses a bachelor's degree in computer engineering from completed in 2002.

The record contains the following evidence relating to the beneficiary's education:

- Copies of certificates issued by the State Board of Technical Education and Training The first certificate, issued December 17, 1998, states that the beneficiary completed a three-year, full-time diploma course of study in computer engineering at as of May 31, 1998. The second reflects that the beneficiary completed a one and one-half year full-time post diploma course of study on computer applications at as of October 31, 2000. Academic transcripts accompany both certificates.

- Copies of certificates issued by the first of which, dated October 18, 2003, reflects that the beneficiary passed Sections A and B of the Institution Examinations in the Computer Engineering Branch in the winter of 1999 and summer of 2002 respectively. The second certificate indicates that it was awarded to the beneficiary upon his election as an associate of the Institution on September 20, 2002. Academic transcripts accompany both certificates.

Part K of the labor certification reflects that the beneficiary possesses the following employment experience: scientist/engineer 'SC' with the from January 28, 2002 until July 3, 2007; associate consultant with from July 5, 2007 until February 15, 2008; programmer analyst with rom April 1, 2008 until June 11, 2008; software engineer with from June

12, 2008 until December 21, 2010; and senior systems analyst with in Southborough, Massachusetts from January 1, 2011 until the date of filing.

The petitioner has submitted the following evidence to document the beneficiary's experience:

A certificate, dated July 3, 2007, printed on letterhead and signed by its Administrative Officer reflects that the beneficiary was employed from January 28, 2002 until July 3, 2007 as a scientist/engineer 'SC' and that the nature of his work involved software design and development. A March 7, 2012 letter on the organization's letterhead, signed by the Division Head, PIO & HPC confirms that the beneficiary was employed on a full-time basis for a period of 5.51 years and that he performed software development in the field of Satellite Data Processing. This same individual states that the beneficiary's duties included those normally associated with the role of scientist/engineer 'SC,' including programming in C/C++ and ProC, multi-threaded and database programming in PL/SQL, unit testing of developed modules, the execution of all documented test cases and review for logical correctness and efficiency of source code for modules.

– A February 13, 2008 statement on letterhead, signed by the firm's Associate Vice President and General Manager, Human Resources, accepts the beneficiary's resignation as of February 15, 2008. A July 5, 2007 appointment letter from the Executive Vice President, Engineering & Industrial Applications and its General Manager, Human Resources indicates that the beneficiary's employment with as an associate consultant began as of July 5, 2007. A statement on letterhead, dated January 20, 2011 and signed by the Manager, Human Resources, states that the beneficiary was employed on a full-time basis from July 5, 2007 to February 15, 2008 as an associate consultant performing data analysis and processing. The statement specifically identifies the beneficiary's duties as including the design, development, debugging and testing of healthcare algorithms, and reports that he also enhanced the functionality of and added new features to existing algorithms.

A September 10, 2007 letter, written on letterhead, offers the beneficiary employment as a programmer analyst and indicates that his duties will be those expected of a software programmer and analyst. The letter reflects that president signed the letter on September 10, 2007, followed by the beneficiary on September 20, 2007. In a sworn statement, dated June 5, 2012, one of the beneficiary's coworkers states that as a programmer analyst, the beneficiary would have performed the following duties: data analysis and processing, systems analysis of healthcare claims processing systems; systems analysis and design of a healthcare claims processing/claims adjudication engine for compliance with CMS, state regulations and commercial health-plan policies; development and design of web interface according to TCP/IP or Socket Programming and design of a third party interface to Ingenix bundling/unbundling, according to SOAP protocols; development and implementation of client server applications, system maintenance and enhancement support for client server applications;

and debugging, unit testing, and integration testing. This coworker also indicates that during his time at the beneficiary was consistently assigned duties of an increasingly complex nature and acquired more and more responsibility as time progressed

- A June 21, 2012 statement on letterhead, signed by a Senior Director, the beneficiary's manager, states that the beneficiary has been employed by the firm on a full-time basis since June 12, 2008, holding two separate positions: as a software engineer from June 12, 2008 until December 21, 2010 and as a Senior Systems Analyst from January 1, 2011 through the date of the letter. As a software engineer, the Senior Director states, the beneficiary performed data analysis and processing, developed and designed web interface according to TCP/IP and Socket Programming and a third party interface to Ingenix bundling/unbundling, according to SOAP protocols. He states that the beneficiary also developed, wrote, integrated and tested healthcare claims related information with trading partners using C, C++, Pro*C, Oracle, Visual Studios 2005, VC++ and SQL Server Structured Query Language TSQO, as well as multi-threaded and database programming in PL/SQL, XML, XSL/T and XSD. The Senior Director further notes that the beneficiary deployed and maintained complex applications in highly diverse enterprise architecture, and worked collaboratively with clients and business analysts on requirements and business rules, gathering and documenting specifications. He also states that the beneficiary conducted systems analysis of healthcare claims processing systems, and systems analysis and design of a healthcare claims processing and claims adjudication engine for compliance with CMS, state regulations and commercial health plan policies. As a senior systems analyst, the Senior Director indicates, the beneficiary is responsible for leading a team of systems analysts, which requires him to combine technical leadership, discretionary decision-making and project management in his duties.

The director found that the record did not establish that the beneficiary held a U.S. baccalaureate degree or a foreign equivalent degree from a college or university, that when combined with five years of experience, would qualify him for classification under section 203(b)(2) of the Act. He denied the petition accordingly.

On appeal, counsel for the petitioner contends that USCIS' denial of the petition was arbitrary and capricious, as the beneficiary does hold the foreign equivalent of a U.S. baccalaureate degree, a fact which, he asserts, is supported by the Electronic Database for Global Education (EDGE), the authority upon which the AAO routinely relies to determine the equivalency of foreign degrees.

The petitioner's appeal is properly filed and makes a specific allegation of error in law or fact. The AAO conducts appellate review on a *de novo* basis.[3] The AAO considers all pertinent

[3] *See* 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g.*, *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

evidence in the record, including new evidence properly submitted upon appeal.[4] A petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the director does not identify all of the grounds for denial in the initial decision.[5]

II. LAW AND ANALYSIS

The Roles of the DOL and USCIS in the Immigrant Visa Process

At the outset, it is important to discuss the respective roles of the DOL and USCIS in the employment-based immigrant visa process. As noted above, the labor certification in this matter is certified by the DOL. The DOL's role in this process is set forth at section 212(a)(5)(A)(i) of the Act, which provides:

> Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-
>
> > (I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and
> >
> > (II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

It is significant that none of the above inquiries assigned to the DOL, or the regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether the position and the alien are qualified for a specific immigrant classification. This fact has not gone unnoticed by federal circuit courts:

> There is no doubt that the authority to make preference classification decisions rests with INS. The language of section 204 cannot be read otherwise. *See Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C. Cir. 1977). In turn, DOL has the authority to make the two determinations listed in section 212(a)(14).[6] Id.

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[4] The submission of additional evidence on appeal is allowed by the instructions to Form I-290B, Notice of Appeal or Motion, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

[5] *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

[6] Based on revisions to the Act, the current citation is section 212(a)(5)(A).

> at 423. The necessary result of these two grants of authority is that section 212(a)(14) determinations are not subject to review by INS absent fraud or willful misrepresentation, but all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority.
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> . . .
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> Given the language of the Act, the totality of the legislative history, and the agencies' own interpretations of their duties under the Act, we must conclude that Congress did not intend DOL to have primary authority to make any determinations other than the two stated in section 212(a)(14). If DOL is to analyze alien qualifications, it is for the purpose of "matching" them with those of corresponding United States workers so that it will then be "in a position to meet the requirement of the law," namely the section 212(a)(14) determinations.

Madany v. Smith, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983). Relying in part on *Madany*, 696 F.2d at 1008, the Ninth Circuit stated:

> [I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from the DOL that stated the following:

> The labor certification made by the Secretary of Labor . . . pursuant to section 212(a)(14) of the [Act] is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the alien, and whether employment of the alien under the terms set by the employer would adversely affect the wages and working conditions of similarly employed United States workers. *The labor certification in no way indicates that the alien offered the certified job opportunity is qualified (or not qualified) to perform the duties of that job.*

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, revisited this issue, stating:

> The Department of Labor (DOL) must certify that insufficient domestic workers are available to perform the job and that the alien's performance of the job will not

> adversely affect the wages and working conditions of similarly employed domestic workers. *Id.* § 212(a)(14), 8 U.S.C. § 1182(a)(14). The INS then makes its own determination of the alien's entitlement to sixth preference status. *Id.* § 204(b), 8 U.S.C. § 1154(b). *See generally K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 9th Cir.1983).
>
> The INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer.

Tongatapu Woodcraft Hawaii, Ltd. v. Feldman, 736 F. 2d 1305, 1309 (9th Cir. 1984).

Therefore, it is DOL's responsibility to determine whether there are qualified U.S. workers available to perform the offered position, and whether the employment of the beneficiary will adversely affect similarly employed U.S. workers. It is the responsibility of USCIS to determine if the beneficiary qualifies for the offered position, and whether the offered position and the beneficiary are eligible for the requested employment-based immigrant visa classification.

Eligibility for the Classification Sought

Section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), provides immigrant classification to members of the professions holding advanced degrees. *See also* 8 C.F.R. § 204.5(k)(1).

The regulation at 8 C.F.R. § 204.5(k)(2) defines the terms "advanced degree" and "profession." An "advanced degree" is defined as:

> [A]ny United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree

A "profession" is defined as "one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." The occupations listed at section 101(a)(32) of the Act are "architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states that a petition for an advanced degree professional must be accompanied by:

> (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or

(B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

In addition, the job offer portion of the labor certification must require a professional holding an advanced degree. *See* 8 C.F.R. § 204.5(k)(4)(i).

Therefore, an advanced degree professional petition must establish that the beneficiary is a member of the professions holding an advanced degree, and that the offered position requires, at a minimum, a professional holding an advanced degree. Further, an "advanced degree" is a U.S. academic or professional degree (or a foreign equivalent degree) above a baccalaureate, *or* a U.S. baccalaureate (or a foreign equivalent degree) followed by at least five years of progressive experience in the specialty.

When the beneficiary relies on a bachelor's degree (and five years of progressive experience) for qualification as an advanced degree professional, the degree must be a single U.S. bachelor's (or foreign equivalent) degree. The Joint Explanatory Statement of the Committee of Conference, published as part of the House of Representatives Conference Report on the Act, provides that "[in] considering equivalency in category 2 advanced degrees, it is anticipated that the alien must have a bachelor's degree with at least five years progressive experience in the professions." H.R. Conf. Rep. No. 955, 101st Cong., 2nd Sess. 1990, 1990 U.S.C.C.A.N. 6784, 1990 WL 201613 at 6786 (Oct. 26, 1990).

In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the legacy Immigration and Naturalization Service (INS, now USCIS) responded to criticism that the regulation required an alien to have a bachelor's degree as a minimum and that the regulation did not allow for the substitution of experience for education. After reviewing section 121 of the Immigration Act of 1990, Pub. L. 101-649 (1990) and the Joint Explanatory Statement of the Committee of Conference, INS specifically noted that both the Act and the legislative history indicate that an alien must have at least a bachelor's degree:

> The Act states that, in order to qualify under the second classification, alien members of the professions must hold "advanced degrees or their equivalent." As the legislative history . . . indicates, the equivalent of an advanced degree is "a bachelor's degree with at least five years progressive experience in the professions." Because neither the Act nor its legislative history indicates that bachelor's or advanced degrees must be United States degrees, the Service will recognize foreign equivalent degrees. But both the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor's degree.*

56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (emphasis added).

In *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006), the court held that, in professional and advanced degree professional cases, where the beneficiary is statutorily required to hold at least a baccalaureate degree, USCIS properly concluded that a single foreign degree or its equivalent is required. Where the analysis of the beneficiary's credentials relies on work experience alone or a combination of multiple lesser degrees, the result is the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree."[7] In order to have experience and education equating to an advanced degree under section 203(b)(2) of the Act, the beneficiary must have a single degree that is a "foreign equivalent degree" to a United States baccalaureate degree. *See* 8 C.F.R. § 204.5(k)(2).

The beneficiary's degree must also be from a college or university. The regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) requires the submission of an "official academic record showing that the beneficiary has a United States baccalaureate degree or a foreign equivalent degree." For classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires the submission of "an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study." The AAO cannot conclude that the evidence required to demonstrate that a beneficiary is an advanced degree professional is any less than the evidence required to show that the beneficiary is a professional. To do so would undermine the congressionally mandated classification scheme by allowing a lesser evidentiary standard for the more restrictive visa classification. *See Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *per APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003) (the basic tenet of statutory construction, to give effect to all provisions, is equally applicable to regulatory construction). Moreover, the commentary accompanying the proposed advanced degree professional regulation specifically states that a "baccalaureate means a bachelor's degree received *from a college or university*, or an equivalent degree." (Emphasis added.) 56 Fed. Reg. 30703, 30706 (July 5, 1991).[8]

Thus, the plain meaning of the Act and the regulations is that the beneficiary of an advanced degree professional petition must possess, at a minimum, a degree from a college or university that is a U.S. baccalaureate degree or a foreign equivalent degree.

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[7] *Compare* 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) (defining for purposes of H-1B nonimmigrant visa classification, the "equivalence to completion of a college degree" as including, in certain cases, a specific combination of education and experience). The regulations pertaining to the immigrant classification sought in this matter do not contain similar language.

[8] *Compare* 8 C.F.R. § 204.5(k)(3)(ii)(A) (relating to aliens of exceptional ability requiring the submission of "an official academic record showing that the alien has a degree, diploma, certificate or similar award from a college, university, school or other institution of learning relating to the area of exceptional ability").

In the instant case, the petitioner contends that the associate membership awarded the beneficiary by s the foreign equivalent of a U.S. bachelor's degree and that when combined with the beneficiary's employment experience, it qualifies him for the offered position.

In support of the claimed degree equivalency, the petitioner has submitted evaluations[9] of the beneficiary's education prepared by

The October 3, 2011 evaluation prepared by concludes that the beneficiary holds the equivalent of a four-year Bachelor of Science degree in Computer Engineering from an accredited U.S. college or university "based on the single source of the [p]assage of A and B Examinations in Computer Engineering of The also notes that the Indian Ministry of Human Resource Development regards the completion of Section A and B examinations of the s the equivalent of a bachelor's level degree in engineering from a recognized Indian University

In his September 11, 2012 evaluation finds the associate member credential awarded by the o qualify as an academic degree based on the definition of the word "degree" and further contends that the while not a college or university in a traditional sense, is a "professional school" within the field of engineering. He notes that the offers a complete bachelor's level academic program that encompasses studies and examinations that are comparable to those completed by students enrolled in bachelor's degree programs at India and U.S. universities and that dmissions requirements are directly analogous to the admissions requirements of four-year bachelor of engineering programs offered by traditional universities in

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[9] In support of the prior Form I-140 it previously filed on behalf of the beneficiary, the petitioner submitted an evaluation of his education prepared by which found the beneficiary's May 31, 1998 diploma in computer engineering, his October 31, 2000 post diploma in computer applications and his associate membership in when combined, to be the equivalent of a Bachelor of Science in Computer Engineering from a regionally-accredited university in the United States.

[10] USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. USCIS may evaluate the content of the letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795. *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Commr. 1972)); *Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011) (expert witness testimony may be given different weight depending on the extent of the expert's qualifications or the relevance, reliability, and probative value of the testimony).

India and the United States. also indicates that individuals with associate member degrees in computer engineering awarded by are eligible for admission to master's programs at his own university. Accordingly, Professor finds the award of an associate membership in computer engineering to the beneficiary to be a foreign academic degree that "on its own and without combining credentials, is the foreign equivalent of a four-year U.S. Bachelor of Science Degree in Computer Engineering."

further states that he has reached his conclusions regarding the beneficiary's degree equivalency based, in part, on the information provided by EDGE of the American Association of Collegiate Registrars and Admissions Officers (AACRAO) and submits a printout of EDGE's evaluation of associate membership in which states that such membership "[r]epresents attainment of a level of education comparable to a bachelor's degree in the United States." As further proof that the award of associate membership in the the equivalent of a U.S. baccalaureate degree, provides copies of selected pages from "Mapping the World of Education, The Comparative Database System (CDS)," June 1996, jointly published by the U.S. Department of Education and the National Science Foundation. These pages reflect that the DOE Office of Research has assigned a code level of "60" to a membership/fellowship granted by the indicating that it is among "[p]ostsecondary programs and awards that are designed to represent 4 years of study beyond 12-year secondary awards as operationally defined in CDS; and which are not second (graduate-level) programs and awards." Professor points out that the code of 60 assigned to the associate member degree issued by places it in the same category as U.S. bachelor's degrees in engineering. He also submits a copy of a January 16, 2006 notification issued by the Department of Secondary & Higher Education, Ministry of Human Resource Development, India, which indicates that the Government of India has decided to recognize 15 courses of the Section A & B examination as equivalent to a degree in the appropriate branch of engineering of the Recognized Universities of India.

In a follow-up report, dated February 25, 2013 and prepared in response to the director's denial of the petition, gain asserts that the beneficiary's associate member credential in computer engineering is, on its own and without combining credentials, equivalent to a four-year U.S. Bachelor of Science degree in Computer Engineering. He contends that, although the is a nontraditional educational institution, it qualifies as a college and the beneficiary's associate member credential as a degree, based on the plain meanings of these words, and that EDGE and DOE's Comparative Database System have found ssociate membership to be the equivalent of a U.S. bachelor's degree.

In support of this report, Professor submits copies of a prospectus describing the educational system and the A & B examinations process, as well as a copies of pages from "India, A Special Report on the Higher Education System and Guide to the Academic Placement of Students in Educational Institutions in the United States," Special Report 1997, PIER World Education Series, which provides a report on academic requirements. further provides a copy of a discussion of the A & B examinations requirements from an unnamed publication.

The AAO acknowledges the submitted evaluations that find the beneficiary's associate membership in to be the equivalent of a U.S. bachelor's degree in computer engineering, as well as the equivalency accorde associate membership and university engineering degrees by the Government of India. It further notes that EDGE, which USCIS considers a reliable, peer-reviewed source of information about foreign credentials equivalencies,[11] indicates that associate membership "[r]epresents attainment of a level of education comparable to a bachelors degree in the United States" [sic].

However, as previously discussed, classification as an advanced degree professional requires a beneficiary to possess a U.S. bachelor's degree or a foreign degree from a college or university that is equivalent to a U.S. bachelor's degree. Therefore, while EDGE indicates that the beneficiary' associate membership in is education that is comparable to a U.S. bachelor's degree, it is not a degree awarded by a college or university. The is not an institution of higher education that can confer a degree.[12] Therefore, the AAO finds the beneficiary to possess the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree" within the meaning of 8 C.F.R. § 204.5(k)(2).

In reaching this determination, the AAO makes no judgment about the quality of the education provided by the or the beneficiary's expertise in his field. It concludes only that the is not a college or university, and that as the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires the submission of "an official college or university record" to establish a beneficiary as a professional, it cannot apply a lesser standard in the case of an advanced degree professional.

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[11] EDGE was created by AACRAO. According to its website, AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world." *See* http://www.aacrao.org/About-AACRAO.aspx. Its mission "is to serve and advance higher education by providing leadership in academic and enrollment services." *Id.* EDGE is "a web-based resource for the evaluation of foreign educational credentials." *See* http://edge.aacrao.org/info.php. Authors for EDGE are not merely expressing their personal opinions. Rather, they must work with a publication consultant and a Council Liaison with AACRAO's National Council on the Evaluation of Foreign Educational Credentials. *See An Author's Guide to Creating AACRAO International Publications* at http://www.aacrao.org/Libraries/Publications_Documents/GUIDE_TO_CREATING_INTERNATIONAL_PUBLICATIONS_1.sflb.ashx. If placement recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council. USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.

[12] *See Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 *11 (D. Ore. Nov. 30, 2006) (finding USCIS was justified in concluding that the Institute of Chartered Accountants of India membership was not a college or university "degree" for purposes of classification as a member of the professions holding an advanced degree).

Accordingly, the record does not establish that the beneficiary possesses at least a U.S. academic or professional degree (or a foreign equivalent degree) above a baccalaureate, or a U.S. baccalaureate (or a foreign equivalent degree) followed by at least five years of progressive experience in the specialty. Therefore, the beneficiary does not qualify for classification as an advanced degree professional under section 203(b)(2) of the Act.

The Minimum Requirements of the Offered Position

The petitioner must also establish that the beneficiary satisfies all of the educational, training, experience and any other requirements of the offered position by the priority date. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); *see also Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

In evaluating the job offer portion of the labor certification to determine the required qualifications for the position, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

Where the job requirements in a labor certification are not otherwise unambiguously prescribed, e.g., by regulation, USCIS must examine "the language of the labor certification job requirements" in order to determine what the petitioner must demonstrate about the beneficiary's qualifications. *Madany*, 696 F.2d at 1015. The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to "examine the certified job offer *exactly* as it is completed by the prospective employer." *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984)(emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve "reading and applying *the plain language* of the [labor certification]." *Id.* at 834 (emphasis added). USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification or otherwise attempt to divine the employer's intentions. Even though the labor certification may be prepared with the beneficiary in mind, USCIS has an independent role in determining whether the beneficiary meets the labor certification requirements. *See Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 *7 (D. Or. Nov. 30, 2006).

As previously noted, the labor certification in the present case requires the beneficiary to possess a bachelor's degree or a foreign equivalent degree in engineering, electronics, telecommunications, communications, computer science, information technology or mathematics, plus five years of progressively more responsible experience as a senior systems analyst. The labor certification also reflects that a master's degree will be accepted, when accompanied by three years of employment experience. For the reasons explained above, the petitioner has failed to demonstrate that the beneficiary possesses a foreign degree that is the equivalent of a U.S. bachelor's degree.

The petitioner has failed to establish that the beneficiary met the minimum requirements of the offered position set forth on the labor certification as of the priority date. Accordingly, the petition must also be denied for this reason.

III. CONCLUSION REGARDING BENEFICIARY QUALIFICATIONS

In summary, the petitioner has failed to establish that the beneficiary possessed an advanced degree as required by the requested preference classification and the terms of the labor certification. Therefore, the beneficiary does not qualify for classification as a member of the professions holding an advanced degree under section 203(b)(2) of the Act. The director's decision denying the petition is affirmed.

IV. ADDITIONAL BASIS FOR DENIAL

Beyond the decision of the director, the record also fails to establish the petitioner's ability to pay the proffered wage, which in the present case is $99,756.80. The petitioner must demonstrate its ability to pay the proffered wage from the May 27, 2008 priority date until the beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). Evidence of ability to pay "shall be in the form of copies of annual reports, federal tax returns, or audited financial statements." *Id.*

The record before the director closed on September 28, 2012, with the receipt of the petitioner's submission in response to the director's request for evidence. As of that date, the petitioner's 2011 federal income tax return was the most recent return available. The petitioner has not, however, submitted its 2011 tax return or its returns for earlier years. The only federal tax record found in the record is that for 2007, which accompanied the first Form I-140 filed by the petitioner on beneficiary's behalf. The petitioner has also failed to provide any annual reports or audited financial statements to establish its ability to pay the proffered wage as of the May 27, 2008 priority date. Accordingly, the petitioner has not complied with the requirements of 8 C.F.R. § 204.5(g)(2).

The record does contain a February 29, 2012 letter from the petitioner's Chief Financial Officer (CFO) who indicates that the petitioner employs more than 348 employees. In his letter, the CFO states that the petitioner has "sufficient funds on account and access to capital to meets it financial obligations, including the salaries of its employees" [sic]. The AAO acknowledges that the regulation at 8 C.F.R. § 204.5(g)(2) allows USCIS to consider the statements of a petitioner's financial officer as proof of ability to pay where that petitioner employs in excess of 100 people. However, while a petitioner may submit such evidence to establish its ability to pay the proffered wage, this evidence may not be substituted for that required by regulation. Accordingly, the submitted letter from the petitioner's CFO does not establish its ability to pay the proffered wage. The AAO additionally notes that USCIS databases reflect that the petitioner has filed 68 Form I-140 petitions during the past 36 months. If a petitioner has filed petitions for multiple beneficiaries, it must establish that it has the ability to pay the proffered wages to each beneficiary as of that beneficiary's priority date. *See Matter of Great Wall*, 16 I&N Dec. 142, 144-145

(Acting Reg. Comm. 1977). *See also* 8 C.F.R. § 204.5(g)(2). In the present case, the petitioner has not addressed its financial obligations to the multiple beneficiaries for whom it has filed Form I-140 petitions.

The petitioner has failed to submit the annual reports, tax records or audited financial statements required by the regulation at 8 C.F.R. § 204.5(g)(2). Accordingly, the AAO finds that it has not demonstrated its ability to pay the proffered wage from the May 27, 2008 priority date onward.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.